IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 755 OF 1996

1. Kashinath Dharma Chimane
2. Laxman Dharma Chimane
3. Rambhau Dharma Chimane ..Appellants

versus

The Special Land Acquisition
Officer, Panvel, Dist: Raigad ..Respondents

Mr. N. V. Walavalkar for the Appellants.
Mr. Y. M. Nakhawa, AGP for the Respondents-State.

CORAM : D. G. DESHPANDE,J.

DATE : 16TH MARCH,2005

ORAL ORDER :

1. This Appeal is filed by the Appellants - original claimants for enhancement of the compensation. The Reference Court awarded them Rs.14/- per sq. meter. They are claiming Rs.25/- per sq. meter.

2. Counsel for the Appellants relied upon the judgment of Justice Mhatre in **First Appeal No. 180 of 1989 (The State of Maharashtra vs. Chandar**

Mahadu Bhende & Anr.) dated 17.12.2004, who in turn had relied upon the judgment of the Division Bench in **First Appeal No. 757 of 2003 dated 31.3.2004.** In the Division Bench judgment the land acquired were from Kamothe Village and the criteria that was applied was proximity of the acquired lands to the National Highway. The Division Bench made three groups of acquired land. First group consisted of lands within 750 meters from the National Highway where the market rate was fixed at Rs.25/- per sq. meter. Second group consisted of land between 750 sq. meters to 1500 sq.meters where the market rate was fixed at Rs.26/-, and third group of lands included lands beyond 1500 sq. meters and the market rate for these lands was fixed at Rs.23.5 per sq. meter. Rs.10/- was deducted from this amount and thus Rs.21/- was fixed as compensation payable for lands beyond 1500 sq. meters from the National Highway. Admittedly, the Single Bench observed and found that the lands in Appeal No. 180 of 1989 were situate beyond 1500 meters and therefore the Respondents was found to be entitled to compensation at Rs.21/- per sq. meter.

3. As against this, there is a judgment of the **Division Bench (A.P. Shah and J.A. Patil, JJ) in First Appeal No. 875 of 1985 and 30 other Frist Appeals with 4 Cross Objections.** It was a judgment

in group of appeals and the criteria that was applied was proximity of the acquired lands from the National Highway. I have followed this Judgment in my subsequent judgments from the same area, and, particularly, in group of Appeal Nos. 695 of 1992 along with other seven Appeals decided on 20.1.2005. It has to be noted that in the Division Bench Judgment of A. P. Shah and J.A. Patil, JJ. the report of the Expert was on record regarding the actual distance between the acquired land and the Bombay Pune National Highway. In the group of matters before me, referred to above, also Expert Jeevan Kulkarni was examined by all those claimants and he had given specifically the distance of the acquired lands from the National Highway.

4. In the present appeal also the report of Jeevan Kulkarni is on record and he has stated that the acquired land is 3200 sq. meters from Bombay Pune National Highway. As between the two judgments of the Division Bench, since in the judgment of A.P. Shah and J.A. Patil, JJ. they have specifically dealt with this issue and have referred to the actual distances and had not awarded compensation by generally taking into consideration the proximity of the acquired land with the National Highway, I have followed that judgment in the other subsequent cases including group of matters viz. First Appeal No.

695 of 1992 and seven other appeals.

5. Specific data regarding the distance is available in the present appeal. It is 3200 sq. meters from Bombay Pune National Highway and for the land acquired from Village Owe where the distance was 1120 meters the compensation at Rs.13/- per sq. meter was found proper. The land in the present case is further away from the National Highway. It is 3200 sq. meters and therefore compensation awarded by the Refernece Court is found proper. No enhancement is necessary nor it can be granted. Hence, Appeal is dismissed. No order as to costs.

16.3.2005 (D.G. DESHPANDE, J.)